

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Steven Ringelberg,

5 Plaintiff

6 v.

7 Vanguard Integrity Professionals-Nevada, Inc., et al.,

8 Defendants

2:17-cv-01788-JAD-PAL

**Order Denying Motions for Default
Judgment and to Strike**

[ECF Nos. 32, 38]

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10 Plaintiff Steven Ringelberg filed a “Motion for Entry of Judgment” asking this court to enter
11 judgment against the defendants under FRCP 55(b)(2) as to liability and “set a schedule for
12 discovery and a trial on damages only” because the defendants have not answered his second
13 amended complaint.¹ There are multiple problems with this request, each of which independently
14 requires its denial.

15 First, plaintiff skipped a required step. Rule 55 of the Federal Rules of Civil Procedure,
16 which governs defaults and default judgments, requires that a default be entered before a default
17 judgment can be requested.² Because no default against the defendants has been requested or
18 entered, plaintiff’s request for a default *judgment* is early.

19 Second, even if I construe this motion as one for entry of default, it lacks merit. Rule 55(a)
20 directs the Clerk to default a party who “has failed to plead *or otherwise defend*.”³ “A motion to
21 dismiss constitutes defending an action within the meaning of this rule even if the defendants have

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23 ¹ ECF No. 32.

24 ² As the Ninth Circuit Court of Appeals has stated, Rule 55 requires a “two-step process” consisting
25 of: (1) seeking a clerk’s entry of default, and (2) filing a motion for the entry of default judgment.
26 *See, e.g., Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (“Eitel apparently fails to understand
27 the two-step process required by Rule 55.”); *accord Symantec Corp. v. Global Impact, Inc.*, 559 F.3d
922, 923 (9th Cir. 2009) (noting that Rules 55(a) and (b) provide a two-step process for obtaining a
default judgment).

28 ³ Fed. R. Civ. P. 55(a) (emphasis added).

1 not filed answers to the complaint.”⁴ And the defendants have filed motions to dismiss, entered into
2 a stipulation to transfer this case from the District Court for the District of Columbia to this district,
3 and filed a new motion to dismiss the same day that plaintiff’s motion for judgment was filed.⁵
4 These filings demonstrate an intention to defend and preclude the entry of default.

5 Finally, before granting a request for default judgment, the court must evaluate several factors
6 including: “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive
7 claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the
8 possibility of a dispute concerning material facts; (6) whether the default was due to excusable
9 neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions
10 on the merits.”⁶ Plaintiff has not addressed these factors at all, let alone demonstrated why they
11 favor default judgment here. I thus deny the motion for default judgment.

12 Plaintiff has also moved to strike the defendants’ motion to dismiss, arguing that it is
13 procedurally improper.⁷ I find that this procedural objection should be included as an argument in
14 opposition to the motion to dismiss⁸, not as a motion to strike the motion. Accordingly, I deny the
15 motion to strike and direct the plaintiff to simply include this procedural objection as an argument in
16 his opposition to the motion to dismiss.

17 ORDER

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Judgment [ECF No. 32]
19 is **DENIED**;

20 IT IS FURTHER ORDERED that Plaintiff’s Motion to Strike Defendants’ Rule 12(b)(6)
21 Motion and Any Supporting Pleadings or Exhibits [ECF No. 38] is **DENIED**. Plaintiff is instructed
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23 ⁴ *Song v. Deeds*, 947 F.2d 951 (9th Cir. 1991) (unpublished).

24 ⁵ ECF Nos. 15, 20, 21, 34.

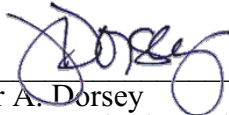
25 ⁶ *Eitel v. McCool*, 782 F.2d at 1471–72.

26 ⁷ ECF No. 38.

27 ⁸ ECF No. 34.

1 to incorporate the subject of the motion to strike into his opposition to the motion to dismiss [ECF
2 No. 34].

3 Dated this 4th day of August, 2017

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6 Jennifer A. Dorsey
7 United States District Judge
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